

1 Amy M. Samberg, NV Bar No. 10212  
2 [asamberg@fgppr.com](mailto:asamberg@fgppr.com)  
3 FORAN GLENNON PALANDECH  
4 PONZI & RUDLOFF PC  
5 400 East Van Buren Street, Suite 550  
Phoenix, AZ 85004  
Telephone: 602-926-9880  
Facsimile: 312-863-5099

6 Lee H. Gorlin, NV Bar No. 13879  
7 [lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)  
8 FORAN GLENNON PALANDECH  
PONZI & RUDLOFF PC  
2200 Paseo Verde Parkway, Suite 280  
Henderson, NV 89052  
Telephone: 702-827-1510  
Facsimile: 312-863-5099

11 *Attorneys for Chubb Bermuda Insurance, Ltd*

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

15 BLOOMIN' BRANDS, INC.,

CASE NO. 21-310

16 Plaintiff,

17 v.  
**NOTICE OF REMOVAL**

18 AIG SPECIALTY INSURANCE COMPANY;  
19 ARCH SPECIALTY INSURANCE  
COMPANY; ALLIED WORLD ASSURANCE  
COMPANY; CHUBB BERMUDA  
INSURANCE LTD.; ACE AMERICAN  
INSURANCE COMPANY; CRUM &  
FORSTER SPECIALTY COMPANY;  
22 HALLMARK INSURANCE COMPANY; HDI  
GLOBAL INSURANCE COMPANY;  
IRONSHORE SPECIALTY INSURANCE  
COMPANY; MAXUM INDEMNITY  
COMPANY; ENDURANCE AMERICAN  
25 SPECIALTY INSURANCE COMPANY;  
WESTCHESTER SURPLUS LINES  
INSURANCE COMPANY; ZURICH  
AMERICAN INSURANCE COMPANY,

28 Defendants.

## **NOTICE OF REMOVAL**

TO: THE HONORABLE JUDGES OF THE ABOVE-ENTITLED COURT:

Pursuant to 9 U.S.C. §§ 202 and 205, and 28 U.S.C. §§ 1441 and 1446, Defendant Chubb Bermuda Insurance Ltd. (“Chubb”) hereby removes this state court action, entitled *Bloomin’ Brands, Inc. v. AIG Specialty Insurance Company, et. al.*, Eighth Judicial District Court Civil Action No. A-21-829435-B<sup>1</sup> (the “State Action”) to the United States District Court for the District of Nevada. The grounds for this removal arise out of an international arbitration agreement to be conducted pursuant to the Arbitration Act of 1996 of the United Kingdom. Under the Federal Arbitration Act, Chubb has an automatic right to remove this entire action to federal court without obtaining the consent of any defendant. In support of its petition for removal, Chubb states as follows:

1. Defendant Chubb is a foreign company, incorporated under the laws of Bermuda with its principal place of business in Hamilton, Bermuda. Chubb has no offices and does not transact business in the United States, let alone Nevada.

2. Chubb issued an excess property policy to Bloomin' Brands, Inc. ("BBI") bearing number 01547P02 (the "Chubb Policy"), which contains a provision that mandates any disputes or controversies be arbitrated in London under the Arbitration Act of 1996 (as amended or supplemented) of the United Kingdom. A copy of the Chubb Policy is annexed hereto as ***Exhibit A***.

3. On or about February 12, 2021, BBI filed the complaint in the State Action in the Eighth Judicial District Court, Clark County, Nevada, asserting claims for coverage and bad faith claim handling against, among others, Chubb. See, Complaint, attached hereto as ***Exhibit B***. The Complaint, along with Summons has not been served on Chubb. Upon information and belief, no defendant in this action has been served with a Summons and a copy of the Complaint.

4. The filing of the lawsuit against Chubb was and is in contravention of the mandatory arbitration provision of the Chubb Policy.

<sup>1</sup> The State Action was initially designated with case number A-21-829435-C , but the number has been changed to its current case number, A-21-829435-B.

1       5.     The Chubb Policy has a broad and all-encompassing arbitration provision:

2               Any dispute arising out of or relating to this Policy, or the breach thereof, shall be  
 3               fully and finally determined in London, England under the provisions of the  
 4               Arbitration Act of 1996 (as amended or supplemented) by an Arbitration Board  
 5               composed of three arbitrators. . . . All awards made by the Arbitration Board shall  
 6               be final and no right of appeal shall lie from any award rendered by the Arbitration  
 7               Board.

8               Exhibit A, at pg. 6 (§ 4) (BBI\_001113).

9       6.     The arbitration agreement between Chubb and BBI is an international arbitration  
 10              agreement subject to the Convention on the Recognition and Enforcement of Foreign Arbitral  
 11              Awards (hereinafter "the Convention"). 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38,  
 12              art. II, June 10, 1958.

13       7.     BBI is obligated to comply with the above arbitration provision.

14       8.     This removal is predicated upon the FAA and an international agreement between  
 15              Chubb and BBI to arbitrate any claims and disputes with respect to the Chubb Policy in London  
 16              under various UK Arbitration Acts.

17       9.     Section 202 of the FAA provides that "[a]n arbitration agreement or arbitral award  
 18              arising out of a legal relationship, whether contractual or not, which is considered as  
 19              commercial . . . falls under the Convention" unless the agreement arises out of a relationship  
 20              "entirely between citizens of the United States." 9 U.S.C. § 202.

21       10.    Section 205 of the FAA authorizes the removal of state court actions involving an  
 22              arbitration agreement falling under the Convention as follows:

23               Where the subject matter of an action or proceeding pending in a  
 24              State court relates to an arbitration agreement or award falling under  
 25              the Convention, the defendant or the defendants may, at any time  
 26              before the trial thereof, remove such action or proceeding to the  
 27              district court of the United States for the district and division  
 28              embracing the place where the action or proceeding is pending. The  
 29              procedure for removal of causes otherwise provided by law shall  
 30              apply, except that the ground for removal provided in this section  
 31              need not appear on the face of the complaint but may be shown in  
 32              the petition for removal.

33       9 U.S.C. § 205.

34       11.    Under 28 U.S.C. §§ 1441 and 1446, defendants have a statutory right to remove a  
 35              case from state court to the district and division of the United States District Court within which

1 such state court action is pending where that case could have originally been filed in federal court.  
 2 The grant of this right is authorized, in part, by Article III, Section 2 of the United States  
 3 Constitution, which extends judicial power of the federal courts to controversies “arising under the  
 4 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

5       12.     BBI’s claims are thus removable because they involve an arbitration agreement that  
 6 falls under the Convention, and the implementation of the arbitration will affect the outcome of the  
 7 action against Chubb. This Notice of Removal is timely filed under the FAA. *See* 9 U.S.C. § 205  
 8 (permitting removal “at any time before the trial”).<sup>2</sup>

9       13.     BBI’s claims against Chubb cannot be resolved without interpreting the  
 10 arbitration agreement pursuant to the FAA (9 U.S.C. § 2). As such, the resolution of the claims  
 11 between BBI and Chubb requires the interpretation of Federal law thus presenting a Federal  
 12 Question and invoking this Court’s jurisdiction. 28 U.S.C. §§ 1331, 1441(a).

13       14.     When a civil action is removed solely under §1441(a), only those defendants  
 14 who have been properly joined and served must join in or consent to the removal of the  
 15 action. 28 USC §1446(b)(2)(A). Moreover, there is no requirement under the FAA that Chubb  
 16 obtain the consent of any other defendant in removing this action to this Court pursuant to the FAA.  
 17 Indeed, it would be contrary to and inconsistent with the objectives and purposes of allowing  
 18 removal from state court to federal court under the FAA to require the removing party to obtain  
 19 consent of all other defendants.<sup>3</sup>

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22       <sup>2</sup> Nev. Rev. Stat. § 597.995, governing arbitrations, has been deemed preempted by the FAA  
 23 *MMAWC, LLC v. Zion Wood Obi Wan Tr.*, 448 P.3d 568, 571 (Nev. 2019); *Godhart v. Tesla, Inc.*,  
 No. 2:19-cv-01541-JAD-VCF, 2020 WL 2992414, at \*3 (D. Nev. June 4, 2020).

24       <sup>3</sup> Moreover, because no other defendant has been served at the present time, their consent is not  
 25 required. *Salveson v. W. States Bankcard Ass’n*, 731 F.2d 1423, 1429 (9th Cir.1984) (superseded  
 26 by statute on other grounds); *see also Nat'l Roofing Indus. Pension Plan v. Acropolis Investments,*  
*Ltd.*, No. 2:10-CV-1882 JCM LRL, 2011 WL 830269, at \*1 (D. Nev. Mar. 4, 2011); *Fortunato v.*  
*Countrywide Home Loans Inc.*, No. 2:12-CV-360-JCM-PAL, 2012 WL 13055160, at \*1 (D. Nev.  
 27 Apr. 6, 2012); *Voga v. U.S. Bank*, No. 3:11-CV-316-RCJ-VPC, 2011 WL 5180978, at \*3-4 (D.  
 28 Nev. Oct. 27, 2011).

15. The State Court Action is pending in the Eighth Judicial District Court of the State of Nevada, County of Clark. This Court embraces Clark County. 28 U.S.C. § 108. This Court is, therefore, the proper court to which the action should be removed. 28 U.S.C. §§ 1441(a), and 1446(a).

WHEREFORE, Chubb hereby notifies the Plaintiff and the Court that this action has been removed from The Eighth Judicial District Court of the State of Nevada, County of Clark.

Dated this 24<sup>th</sup> day of February 2021.

FORAN GLENNON PALANDECH PONZI  
& RUDLOFF PC

By /s/ Amy M. Samberg  
Amy M. Samberg (NV Bar No. 10212)  
400 E. Van Buren, Suite 550  
Phoenix, AZ 85004

Lee H. Gorlin (NV Bar No. 13879)  
2200 Paseo Verde Parkway, Suite 280  
Henderson, NV 89052

*Attorneys for Chubb Bermuda Insurance,  
Ltd.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **NOTICE OF REMOVAL** was served this date by the method indicated:

- BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
  - BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
  - BY ELECTRONIC SERVICE:** submitted to the above-entitled Court for electronic service upon the Court's Service List for the above-referenced case.
  - BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

Dated this 24<sup>th</sup> day of February 2021.

/s/ *Regina Brouse*  
An Employee of Foran Glennon